

The *Notice* was a negative action, as it declared that the petitioner had been overpaid \$4,313.00 in CC benefits, and that the Department expects repayment of this amount.

3. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on May 3, 2016.
4. On May 11, 2016, the Department filed a *Motion to Dismiss for Failure to Timely Appeal* with this office, regarding this case. A copy of the *Motion* was mailed to the petitioner by the Department.
5. On May 12, 2016, this Judge mailed a letter to the petitioner. The letter advised of the receipt of the *Motion*, and further told the petitioner to fax or mail to this Judge any response within 7 days. Nothing was received by the end of the Friday, May 20 business day.

DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by the Department, or its agents, concerning Child Care Benefits must be filed within **45 days** of the notice or the effective date of the negative action, whichever is later. Wisconsin Stat. § 49.152(1), WI Admin Code §HA 3.05(3). A negative action can be the denial of an application or a denial of payment of Child Care Benefits. Because the petitioner's appeal was filed **85 days** after the Department's negative action concerning Child Care Benefits, it is untimely.

CONCLUSIONS OF LAW

There is no jurisdiction because the petitioner's May 3, 2016 appeal is untimely. Thus, no hearing will be conducted on May 25, 2016.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

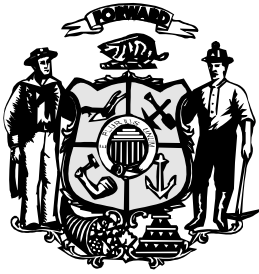
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on

those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 23rd day of May, 2016

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 23, 2016.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud
Attorney [REDACTED]